

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-08-SE-035
)	NAL/Acct. No. 200932100017
Multi-Tech Systems, Inc.)	FRN No. 0009336579
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 8, 2008**Released: December 10, 2008**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Multi-Tech Systems, Inc. (“Multi-Tech”) apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 2.803(a) and 15.105(a) of the Commission’s Rules (“Rules”).² The noted apparent violations involve Multi-Tech’s marketing of a radio frequency device without including the required consumer disclosure in the user manual.

II. BACKGROUND

2. Multi-Tech is a manufacturer of communications and device networking products that provide voice and data services over internet protocol networks.³ One of its products, the CallFinder® Global System for Mobile Communications (“GSM”) (“CallFinder”), a radio frequency transmitting device, is a cellular gateway that enables users to connect to a private branch exchange (“PBX”) trunk line, PBX extension line, or a single public switched telephone network (“PSTN”) line and route incoming and outgoing calls through a GSM wireless network. Because the CallFinder is a Class A digital device,⁴ Multi-Tech must verify that it complies with the requirements contained in Part 15 of the Rules⁵ and must distribute it with a customer notice informing users of the potential for harmful

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a) and 15.105(a).

³ See http://www.multitech.com/COMPANY/company_profile/ (last visited Sept. 12, 2008).

⁴ A Class A digital device is one that is “marketed for use in a commercial, industrial or business environment, exclusive of a device which is marketed for use by the general public or is intended to be used in the home.” See 47 C.F.R. § 15.3(h). Thus, because the CallFinder device is marketed for use in a commercial, industrial or business environment and not for residential use, it is a Class A digital device.

⁵ See 47 C.F.R. §§ 15.107 and 15.109. See also the equipment authorization obtained for the modem module contained in the CallFinder device under FCC ID AU792U05E06800 on August 18, 2005.

interference.⁶ Further, the modem⁷ contained in the CallFinder device must be certified under Parts 22 and 24 of the Rules.⁸

3. The Enforcement Bureau's Spectrum Enforcement Division ("Division") received a complaint alleging that Multi-Tech is marketing a radio frequency transmitting device, the CallFinder, which causes high levels of radio frequency interference to electronic devices, such as speakers and other telephone landlines, being used in the vicinity of the CallFinder, thus rendering the devices unusable. After its receipt of the complaint, the Division began an investigation. In pursuance of the investigation, the Division, on June 16, 2008, directed a letter of inquiry ("LOI") to Multi-Tech.⁹ Multi-Tech responded on July 8, 2008.¹⁰ Multi-Tech states that it holds grants of equipment authorization for the cellular socket modem contained in the CallFinder (Model CF100FX2) and that the modem has been tested and certified in accordance with Parts 22 and 24.¹¹ Multi-Tech states that it first started marketing the equipment in October, 2006 and that it has distributed 732 units across the United States since then.¹² Further, Multi-Tech states that it has verified that the CallFinder device complies with Part 15 of the Rules and that the CallFinder device has been found to be compatible with the AT&T Wireless network.¹³ Finally, Multi-Tech admits that the CallFinder device's manual does not contain the language regarding potential interference that is required by Section 15.105(a) of the Rules.¹⁴

III. DISCUSSION

A. Multi-Tech Apparently Marketed Devices That Lacked the Required Consumer Disclosure

4. Section 302(b) of the Act provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section." For a device subject to verification, Section 2.803(a)(2) of the Commission's implementing regulations provides in pertinent part that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device¹⁵ unless ... [i]n the case of a device ... which must comply with specific technical

⁶ See 47 C.F.R. § 15.105(a).

⁷ A modem is a device which converts an analog signal to a digital signal and vice versa. Modems are used to transmit data over the PSTN. See Harry Newton, *Newton's Telecom Dictionary*, 446 (CMP Books, 17th ed., 2001).

⁸ See FCC ID AU792U05E06800 (granted August 18, 2005).

⁹ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Patricia Sharma, President, Multi-Tech Systems, Inc. (June 16, 2008) ("LOI").

¹⁰ See Letter from Jeff Davis, Vice-President of Engineering, Multi-Tech Systems, Inc., to Neal McNeil, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (July 8, 2008) ("LOI Response").

¹¹ See LOI Response at 1.

¹² See LOI Response at 1.

¹³ See *id.*

¹⁴ See *id.*; see also 47 C.F.R. § 15.105(a).

¹⁵ 47 C.F.R. § 2.801 defines a radiofrequency device as "any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means."

standards prior to use, such device also complies with all applicable administrative ... technical, labeling and identification requirements

5. In addition to the verification and labeling requirements for the device itself, Section 15.105(a) requires that

For a Class A digital device or peripheral, the instructions furnished the user shall include the following or similar statement, placed in a prominent location in the text of the manual:

NOTE: This equipment has been tested and found to comply with the limits for a Class A digital device, pursuant to part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference when the equipment is operated in a commercial environment. This equipment generates, uses, and can radiate radio frequency energy and, if not installed and used in accordance with the instruction manual, may cause harmful interference to radio communications. Operation of this equipment in a residential area is likely to cause harmful interference in which case the user will be required to correct the interference at his own expense.

Multi-Tech indicates that AT&T tested the CallFinder device with its wireless network and found it to be compatible.¹⁶ Thus, we find it unlikely that the CallFinder device is the cause of the interference noted in the complaint that formed the basis for the investigation. Multi-Tech admits, however, that the user manual did not contain this language prior to its receipt of the LOI.¹⁷ Multi-Tech states that it is updating the manual to include the language required by Section 15.105(a).¹⁸ We find, accordingly, that Multi-Tech apparently marketed¹⁹ radio frequency devices without the required consumer disclosure in the user manual in willful²⁰ and repeated²¹ violation of Section 302(b) of the Act and Sections 2.803(a)(2) and 15.105(a) of the Rules.

¹⁶ LOI Response at 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Marketing, as defined in 47 C.F.R. § 2.803(e)(4), “includes sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.”

²⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act.” *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

²¹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated’, ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a *NAL* for, *inter alia*, a cable television operator’s repeated signal leakage).

B. Proposed Forfeiture

6. Section 503(b) of the Act²² authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act. Under Section 503(b)(2)(D) of the Act,²³ we may assess an entity that is neither a common carrier, broadcast licensee or cable operator a forfeiture of up to \$11,000 for each violation or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation. In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁴

7. Section 503(b)(6) of the Act²⁵ bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an *NAL*. Section 503(b)(6) does not, however, bar the Commission from assessing whether Multi-Tech’s conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.²⁶ Thus, while we may consider the fact that Multi-Tech’s conduct has continued over a period that began during 2006 or earlier, the forfeiture amount we propose herein relates only to Multi-Tech’s apparent violations that have occurred within the past year.

8. Under the Commission’s *Forfeiture Policy Statement*²⁷ and Section 1.80 of the Rules,²⁸ the base forfeiture amount for the marketing of unauthorized equipment is \$7,000. Multi-Tech apparently

²² 47 U.S.C. § 503(b).

²³ 47 U.S.C. § 503(b)(2)(A). The Commission has amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (adjusting the maximum statutory amounts for broadcasters from \$32,500/\$325,000 to \$37,500/\$375,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts for broadcasters from \$27,500/\$300,000 to \$32,500/\$325,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts for broadcasters from \$25,000/\$250,000 to \$27,500/\$300,000). The most recent inflation adjustment took effect September 2, 2008 and applies to violations that occur after that date. *See* 73 Fed. Reg. 44663-5. Multi-Tech’s apparent violations occurred before September 2, 2008 and therefore are not subject to the higher forfeiture limits.

²⁴ 47 U.S.C. § 503(b)(2)(E).

²⁵ 47 U.S.C. § 503(b)(6).

²⁶ *See* 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); *see also Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006), *forfeiture ordered*, Forfeiture Order, 22 FCC Rcd. 1051 (2007); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D’Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, Forfeiture Order, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005).

²⁷ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999).

²⁸ 47 C.F.R. § 1.80(b)(4) Note to Paragraph (b)(4): *Section I. Base Amounts for Section 503 Forfeitures*.

marketed the CallFinder device without including in the user manual the consumer information regarding radio frequency interference required by Section 15.105(a) of the Rules. We note that a \$7,000 forfeiture amount is typically imposed for marketing devices that are not in compliance with applicable technical requirements or are not authorized by an equipment authorization.²⁹ Because marketing a device without the required consumer disclosure is not as significant a violation as marketing an unauthorized or technically non-compliant device, we find that a downward adjustment from the base forfeiture amount to \$4,000, an amount commensurate with the forfeiture imposed in similar cases, is warranted.³⁰

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,³¹ Multi-Tech Systems, Inc. **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for marketing a radio frequency device without including in the user manual the required consumer disclosure in willful and repeated violation of Section 302(a) of the Act and Sections 2.803(a)(2) and 15.105(a) of the Rules.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Multi-Tech Systems, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Multi-Tech will also send electronic notification on the date said payment is made to Linda.Nagel@fcc.gov and Neal.McNeil@fcc.gov.

12. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption. The response should also be e-mailed to Neal McNeil, Spectrum Enforcement Division, Enforcement Bureau, FCC, at Neal.McNeil@fcc.gov and Linda M. Nagel, Esq., Spectrum Enforcement Division, FCC, at Linda.Nagel@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-

²⁹ See, e.g., *LeeTek America, Inc.*, Notice of Apparent Liability for Forfeiture, DA 08-1951 (Enf. Bur., Spectrum Enf. Div. 2008) (“*Leetek*”) (issuing a NAL for marketing pager transmitter systems without proper authorization).

³⁰ See *Ryzex*, 23 FCC Rcd at 884; *DBK*, 23 FCC Rcd at 2875.

³¹ 47 C.F.R. § 0.111, 0.311 and 1.80.

year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Ms. Patricia Sharma, President, Multi-Tech Systems, Inc., 2205 Woodale Drive, Mounds View, MN 55112.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau